In the High Court of Judicature at Madras

Dated: 12.12.2007

Coram:

The Honourable Mr.Justice ELIPE DHARMA RAO

and

The Honourable Mr.Justice S.R.SINGHARAVELU

Writ Petition No.18203 of 2003
and WPMP.No.22754 of 2003

1. Union of India rep.by
   the Secretary,
   Ministry of Defence (DP&S),
   DHQ PO, New Delhi-110 011.

2. The Senior General Manager,
   Heavy Vehicles Factory,
   Avadi, Chennai-600 054.

3. The Assistant Works Manager
   (Finance), HVF, Avadi,
   Chennai-600 054. ..Petitioners

..vs..

1. The Central Administrative Tribunal,
   rep.by its Registrar,
   City Civil Court Buildings,
   High Court, Chennai-600 104.

2. HVF Employees Union,
   rep.by its General Secretary,
   Babuji Circle, HVF Estate,
   Avadi Camp PO, Chennai-600 054.

3. V.Siva Kumar ..Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for

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the records of the 1st respondent relating to the impugned order dated 05.02.2003 passed in O.A.144 of 2002 and quash the same.

For Petitioners : Mr.S.Udayakumar, SCGSC.,

For Respondents : Mr.Karthik Raja for R2 & R3

ORDER

(Order of the Court was made by ELIPE DHARMA RAO,J.,)

The writ petition is directed against the order dated 05.02.2003 passed by the Central Administrative Tribunal in O.A.No.144 of 2002.

2. The case of the applicants/respondents 2 and 3 is that the second respondent is a registered and recognized union and is affiliated to the All India Defence Employees Federation and the applicants are all working as Durwan in the Heavy Vehicles Factory, Avadi, Chennai. The first writ petitioner granted night duty allowance to nine categories of employees of Ordnance Factories and Ordnance Equipment Factories by order dated 12.02.1985. The Durwans were one of the nine categories mentioned in the said order and they were getting the night duty allowance from 12.02.1985. However, the 1st writ petitioner, by Office Memorandum dated 02.04.1998, withdrew the benefit of payment of night duty allowance to the Chowkidar category alone with immediate effect. But the second writ petitioner stopped the night duty allowance to Durwans also on the basis of the said OM. The applicants made representation that the nature of duties and responsibilities of Durwans are different from that of Chowkidar and requested the writ petitioners to continue the grant of night duty allowance to Durwans, but the same was rejected by the 2nd writ petitioner by the impugned order dated 09.10.2001 on the ground that the nature and duties of Durwans are similar to that of Chowkidars. Aggrieved, respondents 2 and 3 herein have filed O.A.No.144 of 2002 before the Tribunal.

3. It is submitted by respondents 2 and 3 that the duties and responsibilities of Durwans are different from that of Chowkidars, that the night duty allowance was granted to nine categories of employees in the Ordnance Factories and Ordnance Equipment Factories by order dated 12.02.1985 of the Ministry of Defence and the discontinuance of payment of night duty allowance only to Durwans amounts to discrimination and there is no post of Chowkidar in the

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Ordnance Factories, that the order dated 02.04.1998 discontinuing night duty allowance to Chowkidars cannot be extended to Durwans and that the impugned order dated 09.10.2001 is arbitrary and illegal and it has to be quashed.

4. The writ petitioners herein have opposed the said claim of the applicants on the ground that the Hon'ble Supreme Court in its judgment dated 01.08.1997 in SLP (Civil) No.25134 of 1996 had upheld the DOP&T U.O.Note dated 12.10.1995 declaring that Chowkidars/Guards being such a category, whose duties contain an element of night duty are not eligible for night duty allowance. The Ordnance Factories Board, Calcutta vide their letter dated 25.09.2001 informed the second writ petitioner that the Ministry of Defense O.M. dated 02.04.1998 discontinuing the night duty allowance to Chowkidars is applicable to Durwans working in the second writ petitioner Ordnance Factory and, therefore, the stoppage of night duty allowance to Durwans working in the Ordnance Factory is correct and the impugned order dated 09.10.2001 rejecting the representation of Durwans in the second writ petitioner Factory is also correct and, therefore, the original application is liable to be dismissed.

5. The Tribunal, on consideration of the facts and circumstances of the case and after going through the records, allowed the original application. Aggrieved by the same, the present writ petition is filed.

6. Heard the learned counsel for both sides.

7. On a careful perusal of the entire materials placed on record and upon hearing the learned counsel for both sides, we are of the considered view that the impugned order passed by the second writ petitioner is liable to be set aside on the ground that there is no specific order of withdrawal of benefit of payment of night duty allowance to the Durwans, since the O.M., dated 02.04.1998 has been specifically issued withdrawing the benefit of payment of night duty allowance to the Chowkidars. When by the earlier proceedings, dated 12.02.1985, nine categories of employees of Ordnance Factories and Ordnance Equipment Factories were granted night duty allowance, the withdrawal proceedings have been issued only regarding Chowkidars and the name of no other category mentioned in the earlier proceedings dated 12.02.1985 finds place in the O.M., dated 02.04.1998. When the proceedings themselves are silent, the writ petitioners cannot place

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reliance on the interpretation given by the Financial Advisor C of A (Fys) at Kolkata, so as to deny benefits to the applicants. Further, the writ petitioners failed to establish that the duties and responsibilities of the Chowkidars and the Durwans are one and the same, so as to say that when the benefits extended to the Chowkidars were withdrawn, the same rule of law will apply to the case of Durwans also. In the absence of any specific order of withdrawal of the benefits, the writ petitioners have no power to withdraw the same merely on the basis of the said interpretation given by the Financial Advisor C of A (Fys) Kolkata.

8. The Tribunal has analysed all the facts and circumstances of the case in their proper perspective and has correctly decided the issue involved wherein we find no illegality or irregularity or perversity in approach calling for our interference. The writ petition fails and same is, accordingly, dismissed. No costs. Consequently, connected WPMP. is also dismissed.

gl

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar,
   Central Administrative Tribunal,
   Chennai.
2. The General Secretary,
   HVF Employees Union,
   Babuji Circle, HVF Estate,
   Avadi, Camp P.O., Chennai-054.

• One cc to Mr. Karthik, Advocate SR 73906
  One cc to Mr. S. Udayakumar, Advocte sR 73736
  CU (co)
  sg 23/01/08

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